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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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BUTZEL LONG				
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EXAMINER				
JACKSON, BRANDON LEE				
ART UNIT		PAPER NUMBER		
3772				
NOTIFICATION DATE		DELIVERY MODE		
09/09/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patent@butzel.com  
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# Office Action Summary

**Application No.**

10/536,815

**Applicant(s)**

HANSEN, DORIS HJORTH

**Examiner**

BRANDON JACKSON

**Art Unit**

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This office action is in response to amendments/arguments filed and 5/2/2008. Currently, claims 1-9 are pending in the instant application.

#### ***Response to Arguments***

Applicant's arguments filed 5/2/2008 have been fully considered but they are not persuasive. Applicant argues the Johnstone reference does not disclose a manual tensioning means. However, the combination of elastic encircling elements (68, 62) and Velcro fasteners (46, 30) function as a tensioning means; because the tighter the elastic material is wrapped about the user and fastened, the more tension is applied to the user; wherein that tension is manually varied by the user. Applicant points to a section (col. 1, lines 49-53) in the background of the Jonstone reference as a teaching away from varying the tension of the device; however, that section is referring to U.S. Patent 5,152,741 and pieces of prior art and their deficiencies. Applicant argues the loops (78, 79) and grip ends (42, 29) cannot be used as handles for varying the tension of the device. However, the ends (42, 29) are gripped by the user and pulled upon in order to encircle the user, apply the tension for support, and fasten the device. The loops (78, 79) obviously can be gripped by the user and used to fully stretch the back portion of the device during application. Applicant argues loops (78, 79) are mechanical moving parts; however, they are not mechanical moving parts, but static parts because they do not move relative to the device. Applicant argues that the means for manually varying the tension of the band is not wholly or partially concealed within pockets. However, the

elastic encircling elements (68, 62) are concealed within the hem line of the device; thereby making the means for varying the tension of the band at least partially concealed. Applicant argues the method of increasing or decreasing the amount of tension applied is not taught by the Johnstone reference; however, the tension is inherently varied by adjustment of the device by the user to a specific range of tension levels for user comfort.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnstone (US Patent 5,538,502) in view of Danzger (US Patent 5,503,620). Johnstone discloses a surgical chest dressing (10) comprising a flexible band of

stretchable material encircling the chest (col. 2, lines 1-5), a means for (68, 62, 46, 30) manually varying the tension of the band (col. 2, lines 1-5). Shoulder straps (74, 76) are mounted on the band (col. 2, lines 1-5). The band (col. 2, lines 1-5) is secured around the chest, using hook and loop fasteners (46, 30). Handle (79) or ends (42, 29) can be used as grips for manually varying the tension of the dressing (10). The dressing (10) lacks (fig. 4) a mechanical moving part for adjusting the dressing (10). The dressing (10) can be worn next to the skin (fig. 4). The Johnstone device has no mechanical moving parts such as a pulley or drawstring for varying the tension. Johnstone fails to disclose the band is wholly or partially concealed within pockets. However, Danzger teaches support belt (10) comprising a tensioning belt (14) having an elastic (col. 8, lines 9-11) band (96), which is partially concealed by pockets (98, 100, 102, 104). Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the Johnstone device to have tensioning belt partially concealed by pockets, as taught by Danzger, in order to prevent unwanted vertical movement of the band or to prevent tangling of the band.

With respect to claim 9, the method of increasing or decreasing the tension of the band (col. 2, lines 1-5) by applying pressure to the means for (68, 62, 46, 30) manually varying the tension would be inherent to the use of the dressing (10).

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnstone (US Patent 5,538,502) in view of Danzger (US Patent 5,503,620) and further in view of Fletcher (4,630,610). Johnstone/Danzger substantially discloses the claimed

invention; see rejection to claim 1 above. Johnstone/Danzger fails to disclose the surgical dressing is sterile. However, Fletcher teaches a post surgical vest (10) that is sterile (col. 5, lines 4-8). Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the Johnstone/Danzger dressing to be sterile, as taught by Fletcher, in order to prevent infection of the body while wearing the device.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **BRANDON JACKSON** whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brandon Jackson/  
Examiner, Art Unit 3772

BLJ

/Patricia Bianco/  
Supervisory Patent Examiner, Art Unit 3772